

CONFIDENTIAL

OGC 72-0476

30 March 1972

MEMORANDUM FOR THE RECORD

SUBJECT: U. S. v. IBM (69 Civ. 200 S.D.N. Y.)

1. On 29 March 1972, [] (O/PPB) and I met with Messrs. Thorman and Moy, Antitrust Division, Justice, to discuss the matter of Agency compliance with court orders requiring the production of certain documentation to be inspected by defendant's counsel. Thorman is Assistant Chief, Special Litigation Section; Moy is a member of his staff.

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2. At the outset we expressed our concern that production of the type of documentation indicated might intrude on the Director's statutory responsibilities for the protection of sources and methods as well as the Agency's exemption from disclosing information regarding its personnel and organization. It was also pointed out that the scope of the orders might include codeword material which the Agency might have to withhold, orders of court notwithstanding. We also expressed our disquietude that we should be required to produce proprietary information that IBM competitors may have made available to us on a confidential basis.

3. Thorman expressed his appreciation for our concern. He stated, however, that Justice could not support a general disinclination to cooperate. To the extent that the production of some documentation might clash with the Agency's responsibilities, he stated that a formal representation to that effect would have to be made to the Court in each instance. He allowed that during pre-trial argument the Court noted that its orders might require that

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protective measures be taken regarding classified matters. As for proprietary information, arrangements will be made to have such material inspected by counsel under court order protecting further disclosures. Against this background, we were urged to have the required search made, it being suggested that only by having the documentation before it could the Agency make a determination of what material could be produced and under what conditions.

4. The documentation retrieved is to be separated into three categories: (a) unclassified, (b) proprietary, and (c) classified. The classified material is to be further separated into three subcategories: (a) secret and below, (b) top secret, and (c) codeword. In this connection, we stressed the sensitivity of codeword material. It was agreed that Agency documentation would be inspected at the Headquarters facility. It was also agreed that the Agency would reserve to itself the decision as to types of clearances to be required for access to the classified material. It was further agreed that materials stored in the Agency Record Center (location not disclosed) would be treated as being "stored documents", as set out in paragraph 4 of Schedule 1 (see attachment to Justice letter of March 10, 1972).

5. Thorman emphasized that in terms of the court order, the April 15 deadline was critical. By that date he asked that Justice be notified as regards (a) when the documentation could be made available, (b) the approximate quantity in each of the several categories, and (c) the clearances required for access to the classified material. At that time, they also wish to be advised of the general nature and estimated bulk of "stored documents". If the time element so requires, all this information can be given by telephone, provided a confirmatory letter follows thereafter.

6. Pre-trial Order No. 3 (see attachment to Justice letter of March 23, 1972) requires the Agency, among others, to produce documents showing a detailed breakdown of filing systems relating to EDP, together with documents showing the personnel in charge of the organization and management of files containing EDP documentation. As regards the Agency, this order extends to "all offices except Headquarters, Washington, D. C. and McLean, Virginia".


7. Our objections to this order were twofold. First, compliance would contravene the Agency's exemption from disclosing

information regarding its personnel and organization. Second, to the extent the Agency may have offices outside the metropolitan area, we could not permit them to be identified as such. Parenthetically it might be noted that all mention of the DCS offices was studiously avoided. This was based on the assumption, since confirmed, that they do not maintain the type of files described.

8. To extend the scope of the somewhat limited exception set out in Order No. 3, we acknowledged that some of the Headquarters components were located in the Rosslyn area. We proposed that they be considered as being within the scope of the exception indicated. This was accepted. For purposes of indicating Agency compliance with this order, Thorman suggested a letter to Justice would suffice. In substance, this should state that the location of Agency field offices and the identities of their personnel were privileged information, and to the extent that such offices might maintain files relating to EDP, duplicates thereof would be picked up in the search of the Headquarters files.

9. Despite Thorman's assurances that our documentation would be adequately protected, we suggested that the Agency might wish to approach IBM counsel to discuss its being disengaged from the suit. The possibility of entering into a stipulation with counsel was noted. Thorman identified them as being Thomas Barr and Frederick A. O. Schwarz, Jr., of Cravath, Swaine and Moore. Representing Justice in the proceedings is Antitrust staffer Raymond Carlson. The stipulation possibility seemed to give Thorman some pause. He appeared somewhat relieved upon being assured that this approach would not be made except by way of the Antitrust Division.

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Assistant General Counsel

cc: O/PPB 

OGC:RJB:bg

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Remarks:

Doug:

The attached- any comments or suggestions? ASAP. Let's meet to draft Colby's memo to all the DD's.

Bob

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